

NWX-NOAA USEC & ADMIN OFFICES

Moderator: Linda Belton
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2:00 pm CT

Coordinator: Welcome and thank you for standing by. Currently participants are in listen only mode for the presentation. At the time of the question and answer session, please press star then one to ask your question. Today's conference is being recorded - if anyone objects they may disconnect. I would like to turn the conference over to Linda Belton.

Linda Belton: Thank you Operator. Hi, this is Linda Belton calling from NOAA - Office of Legislative and Intergovernmental Affairs. I - in addition to being an intergovernmental affairs representative, I am also the tribal liaison - official tribal liaison for NOAA and working with a team of people from each NOAA line office and folks in the region. I want to thank you for joining us today to discuss the draft NOAA procedures for government to government consultation with federally recognized tribes in Alaska native corporations. I hope you all have copies of the draft report - if not, you can see it on line. In keeping with the requirements that President's Executive Order and Tribal Consultation and Coordination policy with the Department of Commerce. Administrative NOAA has assigned NOAA's Office of Legislative

Intergovernmental Affairs the responsibility of ensuring meaningful and timely government to government consultation and communication.

And this handbook is an attempt to develop and issue guidance on tribal consultations including guidelines; handbooks and procedures and ensuring availability of on line training and other resources for NOAA personnel assisting with tribal consultations. My job is also to maintain documentation of consultations conducted by NOAA in meeting reporting requirements established by Department of Commerce and the Office of Management and Budget.

The designation of a tribal liaison does not change or alter any existing relationships and communications that you already have with our individual line offices and NOAA Regional Offices. So, please allow me to introduce my colleagues joining us today - first we have Ms. Molly Holt who's Staff Attorney - NOAA's Office of General Counsel. Molly provides legal counsel to the tribal liaison and a consultation team - and also joining us is Ms. Dee Alexander, the Senior Advisor on Native American Affairs for the Department of Commerce.

On June 24, in the Federal Register - NOAA announced availability of draft consultation handbook and requested comments and that's one of the reasons that we're having this call today. This draft handbook is intended to assist our staff and I'm going to introduce Molly Holt to give you an idea of - a formalization of the handbook and how it came to be. Molly?

Molly Holt: Thank you Linda. This is Molly Holt - I'm in the NOAA Office of General Counsel. I've provided NOAA representation at the DOC - the development of the DOC policy on government to government consultation with federally

recognized tribes and Alaska natives. In addition to NOAA - this handbook - which I hope you've all now had a chance to take a good look at - was developed in response to the adoption of internal guidance from the Department of Commerce and then subsequently the commerce policy on government to government consultation to allow NOAA to fully implement those commerce level policies.

In addition, one of the things that NOAA's observed over time is that among line offices and regional offices there is often quite a wide range of basic knowledge on how to reach out to tribes and how to make consultations fully available and fully meaningful to tribes. So we thought that the best thing to do might be to develop some NOAA procedures - the internal guidance for how government to government consultation should or could be conducted.

And that's basically the reason for going forward with this handbook - some of us find it to be a long time coming - I'm sure others of us find it brand new and coming from a new place with a new obligation. But regardless it is the policy of the administration and going back to President Clinton with the Executive Order 13175 - to ensure that government to government consultation is available to all federally recognized tribes and Alaska natives. And to make sure that that consultation and the procedures implementing it are truly meaningful in considering the effects of NOAA proposed actions on tribes.

The means for putting together this handbook were fairly simply - Heather Saygar - who's been the Assistant to the Undersecretary recently and is now the Native American liaison - has been chairing an interline office group to develop different parts of the handbook. I think we had - I'm not sure how many now - we had five line offices and of course, Linda working on the

representation and development of the handbook. Each line office representative to the drafting committee went back to a group within their interline office to identify the areas where that line office interacted with tribes; information that line office would be particularly - it would be particularly helpful to that office and to consider the comments and effects - particularly as to workload as on the steps and procedures provided for in the handbook.

We've been working fairly steadily - I want to say for about 10 or 11 months - a little bit less than a year - on developing this handbook and of course now have made it available to the tribes for their comments and consideration; suggestions and revisions.

Linda Belton: Okay thank you. Thank you very much. That was exactly what we needed to hear. If the - this call is scheduled to last for one hour however, if we have to go over, you know, with your questions and with your comments there will not be a problem with that - a little longer maybe - with it being recorded and to capture your issues and your comments and we will have a transcription available if you would like a copy. We do ask - when you ask your questions we ask that you please state your name; your title; and your affiliation before you give your statement and we will try to - and we want to capture your issues and comments as efficiently as we can. Operator I think we are ready for questions now and comments.

Coordinator: Thank you. At this time if you would like to ask a question or make a comment, please press star than one. Once again, to ask a question or make a comment please press star than one. One moment for request - at this time I am showing a request from Rob Jones - please state your name, title and affiliation.

Rob Jones: Hi, this is Rob Jones, I'm with the North West Indian Fisheries Commission and I'm the Coastal Program Coordinator and I'm wondering if there is going to also be an opportunity after the presentation or if you're looking for questions ahead of time that might shape the presentation?

Linda Belton: Oh no, you can - I think the final day for submitting questions and comments is August 24. And so you can send an email to us or give me a call or send an email I think to Heather Saygar at any time after this call if you have additional questions or comments.

Rob Jones: I guess specifically I meant will there be an additional opportunity for questions on this presentation during the webinar?

Linda Belton: Oh yes. Yes, there will be.

Rob Jones: Thank you.

Coordinator: At this time I am showing one more request from Julie Raymond. Please state your name, title and affiliation.

Julie Raymond: Hi, this is Julie Raymond with Querec in Nome, Alaska and I'm our Social Science Program Director. I had a question about how this handbook relates to the Department of Commerce's policy of - in the policy it talked about periodic dialogue between tribal governments and NOAA - and I did not see that mentioned in the handbook at all. Is that something that could be added to the handbook with some more guidance and definition of what that periodic dialogue would actually consist of?

Dee Alexander: Hi Julie, this is Dee Alexander - that's a good catch that you have and a good recommendation that we can go back and look to see if we can include that information. This is, as you know, our first steps in getting all the operating units in the Department of Commerce in compliance with the EEO and with our policy so we are trying our best to get everything coordinated with the tribes and tribal leaders and representatives. So, let us take a look at that and see where we can include that somewhere in the handbook - or if you have a recommendation where you think it should be - we're willing to - please send those comments to us.

Julie Raymond: Okay.

Coordinator: At this time I'm showing no requests - as a reminder, press star and then one.

Linda Belton: Also, Operator - I wanted to know if - ask the folks if there are certain sections that we'd like to discuss on the - if they have a copy of the handbook - if there's certain sections they'd like to discuss or - to please let us know - we have it up on the website and some of you also have - I'm sure - a paper copy also.

Woman: And folks, those of you that see that actual handbook, you know, you'll see a table of contents - we have an introduction area - if there's any comments regarding that section we'd like to hear from you regarding that now.

Coordinator: We have a request from Julie Raymond - your line is open.

Julie Raymond: I'm sorry - I just wanted to clarify if you wanted us to go by section by section with the slides on our screen or if you just wanted us to take.

Woman: It's up to you - if you only have comments on a certain section, just let us know and we can scroll down to that area.

Linda Belton: Yes, our time is a little limited and we can't really go each section but we can try and, you know, take your comments from the section that you may - that you have an interest in.

Julie Raymond: Sure - I had a general question overall so I guess this is maybe a good time - my question was about accountability and what happens if line offices don't follow the procedures in this handbook? Is there a procedure that tries to follow to try and get some accountability for that or - maybe - what is NOAA's thoughts on accountability in general as it relates to this handbook and your policy on consultation in general.

Linda Belton: Molly - would you be able to - Molly - do you want to address that?

Molly Holt: Yes, I'm sorry - could you repeat the question?

Julie Raymond: Sure, my question was about accountability in general and how tribes should proceed if line offices do not follow the procedures within this handbook or if they don't follow the DOC's consultation policy in general - what is NOAA's views on accountability for that kind of thing?

Molly Holt: Well, accountability - I presume that you're speaking about accountability in the - not in the punitive sense but in the sense of where can a tribe seek some kind of recourse to improve the communication or to improve the implementation of the DOC policy?

Julie Raymond: Yes and also more specifically - I wouldn't call it punitive but if some office proceeds with an action that ends up impacting tribes or tribal resources - what recourse do they have - but also more in general like you were saying - what should tribes do if something isn't being done according to what's been published?

Molly Holt: Well, as you know - like the Executive Order 13175 itself - the - neither the handbook nor the DOC's policy nor the Department of Commerce Administrative Order are enforceable in the legal sense. They represent internal policy and internal guidance and - so in the technical sense as to legal recourse - there isn't any. On the other hand - it is the policy of the United States to carry out Executive 13175 and its progeny and you always have the opportunity to seek meetings; to obtain a hearing; to obtain - to express your views to persons within the department and within NOAA and of course, to the administrator and if necessary - to the Secretary.

I presume that you could also copy the Office of Management and Budget which has made itself available as an - to provide some oversight throughout the government for the implementation of Executive Order 13175.

Julie Raymond: Thanks.

Linda Belton: Okay, any more questions?

Coordinator: We do have a request from Rebecca - please state your name and title and affiliation.

Becca Robbins: My name is Becca Robbins - I'm with Hobstrath, Dean and Walker and we represent a number of tribes in Western Alaska. And I have a question - on

page 9 section 6 of the consultation process - and here specifically, but throughout the handbook emphasizes the need for consultation occurring early enough in the decision making process for NOAA to respond to the consultation and to be able to modify NOAA actions and yet later on in the handbook in the DOC - all of the - it clarifies that consultation does not apply to the regional fishery management council process. And since the regional fishery management council - for the most part are really the decision makers - it's pretty rare that the Secretary doesn't implement council action. I'm wondering if you can clarify how those two things can happen simultaneously - that you have consultation early enough in the process for change and yet you don't have it occurring at the council. Thank you.

Molly Holt: Linda, would you like me to take a stab at that? This is Molly.

Linda Belton: Yes, thank you.

Molly Holt: I believe if - in the response to comments on the Department of Commerce policy - NOAA and the department have made clear that fishery management councils are not agencies for the purposes of Executive Order 13175. And therefore; none of this guidance nor the policies themselves apply to the councils. That said - consultation should occur with NEMS and NEMS as we have pointed out - also encourages the tribes to participate actively in the council process because as you point out - many if not most of the policy aspects of (Magnusson) Act Implementation begin with the council. But of course the Secretary does have the ultimate authority over those actions - so consultation will occur through NEMS and through the regional offices; however, the tribes are encouraged to remain active participants in the council process.

Linda Belton: Does that answer? Do you have any other comments - it's Rebecca, yes. Do you have additional comments?

Coordinator: Rebecca your line is still open. Check your mute button, your line is open.

Becca Robbins: I think that clarifies the - sort of what are the authority lies but I guess I'm still wondering if through this handbook - if the councils really can't be required to consult with tribes. It seems as though there's additional steps necessary within that process to ensure that tribes are consulted and I wonder if there's an opportunity to perhaps even insert a step between the councils and the secretarial approval where there really is an opportunity for a tribal consultation. I guess - make that as a comment.

Molly Holt: So let me see if I can clarify what you are suggesting - what I'm hearing you say is that notwithstanding the fact that the council itself does not consult with tribes - you might suggest that there be a specific point after council action at which point there is consultation with the Secretary or the regional office on the action of the council?

Becca Robbins: Yes.

Molly Holt: You'll want to submit written comments or written editorial statement specifically aimed at procedural change that you're suggesting.

Becca Robbins: Yes, I'd be happy to do so and I think overall it's just a concern that's really challenging to ensure consultation at a point in time when the action - NOAA's action can be changed within working with the fishery and management councils and I'll certainly submit additional written comments to that effect.

Molly Holt: Yes, your comment is appreciated and has been - similar thoughts have been discussed in the development of the DOC policy and therefore; your written comments and specific procedural suggestions would be very helpful under the circumstances - acknowledging that the council itself is not subject to Executive Order 13175.

Linda Belton: Thank you Rebecca. I think you'll be submitting those comments - thanks. Do we have?

Coordinator: We have two more requests - did you want to take those now?

Linda Belton: Yes, thank you.

Coordinator: Rob Jones - your line is open.

Rob Jones: Yes, hi - Rob Jones again - North West Indian Fisheries Commission - and I was wondering how does NOAA or a line office determine whether a policy or action will affect the tribe or tribes.

Woman: Hmmm....we're working on that Rob.

Molly Holt: If you have suggestions - it would be great if you wrote them down and sent them in.

Rob Jones: Well, do you expect that to be part of the finalized handbook?

Molly Holt: Well - I don't know -

Woman: It depends on the issue.

Molly Holt: But I think certainly - I think there's an anticipation that when NOAA or some line office is undertaking an activity that may affect a tribe there's some anticipation that the tribe will let NOAA know - on the other hand, you know, ensuring that all the tribes are apprised of all activities is a little bit difficult - especially since many of the activities don't rise to the level of having tribal implications. So I think that we haven't really worked out how that's going to be undertaken - one thought has been to let each line office develop something that's specific to the nature of the activities that line office undertakes. For instance - the Office of Atmospheric Research engages in activities that are quite different from the fisheries service which is different from the coastal services center - these kinds of differences would probably affect the way you examine and an action for a tribal implication.

But we haven't come to a firm view about it yet.

Rob Jones: Okay, thank you.

Coordinator: At this time I'm showing one more request from Julie - your line is open.

Julie Raymond: Hi, this is Julie Raymond - I just wanted to follow up a little bit on what Becca was saying about the fishery management council process and how consultations fits into that. I think that issue, in particular - it's a huge issue particularly in Alaska. Rebecca and I both work - and I think it deserves a little bit more - a little bit more page time here in this handbook because it is such a big issue. And we have some ideas about the process too that we'll share in writing and provide it before the deadline. But I think one possibility is that NOAA - I think they have the ability now to - it just hasn't happened

but maybe needs to be written down - have the ability to slow the council's process down if its proceeding at such a rate where tribal consultation is not at the same position and that the Secretary rejects or sends back decisions this consultation hasn't been appropriately carried out - and I guess that's all I'll say right now but - I think that there are actions that could be written down and included as part of the policy and - because it is such a big issue that it needs a little bit more discussion in this handbook so that Alaska based staff have some guidance on how to proceed with that.

Linda Belton: Thank you Julie.

Julie Raymond: Thank you.

Linda Belton: Do we have other questions or comments?

Coordinator: Not at this time - as a reminder star then one. At this time there are no requests coming through.

Linda Belton: Alright, as a reminder to everyone, if you have - you can make comments or have an additional editorial comments or questions, you can send those in to Heather Saygar at her email address Heather.Saygar@NOAA.gov or you can also send in your comments - you can also send them in by mail - you can mail any additional comments that you may have and please go to our website - NOAA.Legislative.NOAA.gov if you'd like to see - if you'd like to look at the copy of the draft policy if you do not have access to it. And if you'd like to send others to review the policy - since we have not more comments at this time.

Coordinator: I do show one coming through - did you want to take that now?

Linda Belton: Yes, thank you.

Coordinator: Julie your line is open.

Julie Raymond: Hi this is Julie again - I guess I had a general comments on the background section where it talks about ongoing coordination and communication - I was glad that that was in there and this is a handbook for staff - I thought perhaps it could be emphasized a little bit more how important the ongoing coordination and communication was outside the consultation process and just to point out that some tribes view those coordinators efforts as essential to the consultation process even though NOAA may not consider them to be part of the formal process and that tribal consultation - from our perspective is going to be a lot more productive and effective if those ongoing efforts are maintained by tribal liaison or whoever - keeping tribes informed of what's going on and periodically checking in with them. It helps develop that sense of relationship and that we know who you are and you know who we are and I think really helps facilitate any more formal process that come after that. Thank you.

Linda Belton: Thank you for that comment. As I mentioned earlier, you know, as tribal liaison - basically my job is to report to make sure that, you know, we gather all of our reporting requirements for DOC and OBM and also regarding training and other information for NOAA staff. And also as a contact for those who are interested in meeting with NOAA representatives or NOAA leadership here in Washington. My job will not interfere with your ongoing and continued communications with our regional staff. I know you guys have been working very closely with them, particularly in Alaska. I know you work very closely with our regional staff and have good communications and good

relationships and that doesn't change with this new designation. It does not change at all. So, if you have any additional comments?

Coordinator: I have a request from Sandra - your line is open. Please state your name, title and affiliation.

Chuck Tracy: Hi, this is Chuck Tracy with the Pacific Fishery Management Council, Deputy Director here. In regards to the timing of consultations with the tribes - here at the Pacific Council we have a model that works fairly well for us and I guess I'd just like to comment on it. And that is to have the region conduct their formal consultation with the tribes prior to council's final action and, you know, at some point when, you know, for example when fishery management plans with the alternatives have been a range of alternatives have been adopted and maybe a preferred has been identified - but at some point prior to final action to have the consultation with the tribes so that they can prepare their comments and work through their tribal representative on the council to make sure that their views are represented when the council takes their final action and that way we don't get, you know, we don't have to wait until afterwards to - after the council's taken final action to find out that, you know, some issue hasn't been addressed. It doesn't require us to go back and sort of repeat the council approval process before going to the secretarial approval process. So, I just wanted to toss that out there - that has worked well for us and it, you know, just in terms of frontloading the process, it seems like an efficient way to go.

Linda Belton: Thank you - thank you for those comments. Do we have additional comments or questions?

Coordinator: I have one more request from Julie - your line is open.

Julie Raymond: Hi, this is Julie - I had a question and comment about the communication process - I guess it's under 4a - I guess I'm wondering about agencies research activities and how NOAA can make sure that all staff are aware of the consultation policy as well as this handbook and its guidance and I'm thinking specifically of things like the Alaska Fisheries Science Center who's staff conducts research that - in the view of tribes - has the potential to significantly affect them or their resources and, you know, we've had some issues over how consultations should or should not proceed regarding research issues and I'm just wondering how - how we can make sure that that happens in the future and how this information is going to get trickled down I guess to staff in those contexts.

Linda Belton: We plan to work within NOAA once this - to make sure that all NOAA staff not only here in DC and in Silver Spring but in the region - particularly in the region - are aware of the handbook and the policy and we're going to try and work together as part of a team getting this information out to the staff. And so right now we're still - we're in the planning stages of putting that together.

Julie Raymond: Okay. Thanks.

Linda Belton: Any other comments?

Coordinator: At this time I'm showing no other requests - as a reminder star and then one. At this time I'm showing no requests coming through.

Linda Belton: Okay, well again, NOAA - if anyone has any additional comments please send them to us until August 24 - that's the deadline and we hope to have a final

document shortly thereafter. Molly, do you have any closing statements you'd like to make?

Molly Holt: Well, the only thing I would say in closing is to encourage you to continue looking at the document and please send us your edits; your comments; your procedural recommendations - as thoroughly as you can - we are very open to suggestions and - of course within the boundaries of the law - but we will very much - we will consider your thoughts very, very carefully.

Dee Alexander: Thank you Molly. This is Dee - I just want to thank everybody for taking the time to look at this document. It's been a long time coming and I'm so glad that NOAA is on track with getting this handbook put together and the hard work that went into it. And we do appreciate your comments - like Linda said, there will be a transcription of the meeting. If you have anything after you read it once again or look at it - you want to call Molly or myself or Linda to discuss - we are here to listen to you so give us a call anytime. Appreciate all the input.

Linda Belton: Well thank you everyone and have a good afternoon. I think we're done Operator - thank you.

Coordinator: Thank you, today's call is concluded. Participants may disconnect.

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